

International Law Studies – Volume 1
International Law Situations with Solutions and Notes
U.S. Naval War College (Editor)

The thoughts and opinions expressed are those of the authors and not necessarily of the U.S. government, the U.S. Department of the Navy or the Naval War College.

SITUATION I.

A state of war existing between France and Great Britain, a descent is made by a French fleet on the English coast, and several undefended towns are bombarded.

The British Government having communicated on the subject with the neutral powers, the diplomatic representatives of the latter at Paris were instructed to address to the French Government identic notes, intimating that the action of the fleet was inconsistent with the rules of The Hague Conference.

The French Government, in its reply, stated that there existed in the several cases special circumstances justifying the course which was adopted:

1. In one case a demand was made upon the town for a ransom, and was refused.
2. In another case a requisition for supplies had been denied.
3. In yet another, the bombardment was an act of retaliation for the destruction of a French man-of-war by an English torpedo boat using false colors.

The French Government, however, while alleging these special justifications, reserved the question of the lawfulness of bombarding undefended coast towns for purposes other than those stated.

To what extent is the supposed French answer, both as to the special cases stated and as to the general question reserved, supported by modern opinion and practice?

SOLUTION.

By Article XXV of the "Regulations respecting the Laws and Customs of War on Land," adopted at The Hague July 29, 1899, "the attack or bombardment of towns, villages, habitations, or buildings which are not defended is prohibited."

Although this prohibition, since it is found in regulations relating only to war on land, could not be considered

expressly applicable to the operations of naval forces, yet it might, if it were unaffected by any other circumstance, be considered as in spirit forbidding such a bombardment as that in question.

But it appears that it was expressly agreed at The Hague that, without regard to the merits, the question should be reserved. In the deliberations of the second subcommittee of the second committee the delegate from Italy proposed that Article XXV should be made applicable to bombardments by naval forces. Objections were made to this proposal (1) because of the incompatibility of an absolute prohibition with the possible necessities of a naval force in regard to obtaining supplies, and (2) because of the inopportuneness of the proposal. The subcommittee, on motion of its president, then expressed the opinion that the matter should be examined by a future conference. The British delegate, however, adverted to the fact that his Government had refused to take part in the Brussels conference (1874) except on condition that naval questions should remain outside the deliberations. He added that he did not desire to touch the merits of the question, but to declare that for the reason indicated it was impossible for him to associate himself with the subcommittee's expression of opinion; and at his request the fact that he abstained from voting on it was entered on the record. (*Conférence Internationale de la Paix*, part 3, pp. 27-28.)

The conference, in its final act, July 29, 1899, voted certain wishes, among which was the following:

“The conference expresses the wish that the proposal to settle the question of the bombardment of ports, towns and villages by a naval force may be referred to a subsequent conference for consideration.”

This wish formed one of five which “were voted unanimously, saving some abstentions,” the English delegates having abstained from voting. (*Blue Book*, Misc. No. 1 (1899), 289.) It appears therefore that there would be no ground for the supposed representation to France, on the part of the neutral governments, in the case stated.

As to the special circumstances alleged in justification of the act complained of, the following observations may be made:

1. By Stockton's Naval War Code, which is binding upon American officers, "the bombardment of unfortified and undefended towns and places for the nonpayment of ransom is forbidden." This provision is believed to represent the best modern opinion and practice, and it invalidates in principle the first excuse.

2. As to the second case, the French answer is unsatisfactory. In general, a belligerent is forbidden to use wanton or disproportionate violence (Hall, 4th ed., 551); and the mere denial of supplies does not give the right to bombard. (Stockton, Naval War Code, 7.) In the present case there is no claim that the bombardment was in any way a military necessity or that it was carried out because requisitioned supplies were forcibly withheld; nor does it appear that due notice of bombardment was given or that any special circumstances, such as might excuse the necessity for notice, existed.

3. The conclusions to be formed as to the third justification depend on several considerations. It does not appear by the French answer whether the torpedo boat, when she fired her first torpedo or gun, had shown her true colors. With reference to the use of false colors, it is laid down "that soldiers clothed in the uniforms of their enemy must put on a conspicuous mark by which they can be recognized before attacking, and that a vessel using the enemy's flag must hoist its own flag before firing with shot or shell." The United States has taken the lead in forbidding the use of false colors (Stockton, Naval War Code, 8); and it is certain that, even in the case of a naval vessel of a government which had not laid a like inhibition upon its officers, the failure to display the true colors before the actual attack would constitute a flagrant violation of the laws of war, which should be brought to the notice of that government and punished by it.

A reasonable opportunity for explanation and reparation should be given, after which, if redress should be neglected or refused, a right of retaliation would arise. If possible, retaliation should be in kind, unless the action was, as in this case, a gross violation of the dictates of humanity and of civilized warfare. (Snow, 93.) At the same time it is enjoined that in making reprisals due regard

must always be had to the duties of humanity (Stockton, Naval War Code, 8); and it would be desirable to perform an act of retaliation which would not, as in the present case, fall upon people apparently sustaining no proximate relation to the perfidy complained of.

NOTES ON SITUATION I—COAST WARFARE.

Paul Jones.—During the year 1776 John Paul Jones, in command of the sloop-of-war *Providence*, 14 guns and 107 men, on a cruise ranging from the Bermudas to Nova Scotia, made several incursions ashore for the purpose of seizing British stores, releasing American prisoners, and destroying British shipping.¹ These incidents, while they convinced him of the essential importance of a navy to the American cause, left on his mind a clear impression “that the best use to be made of the small force that could be put afloat was to direct it, not so much upon the enemy’s commerce at sea in transit, as upon his coasts and commercial stations, where his shipping would be found congregated, with insufficient local protection. Commerce destroying, to use the modern phrase for an age-long practice, is a wide term, covering many different methods of application. In essence, it is a blow at the communications, at the resources of the country; in system it should be pursued not by random prowling, by individual ships for individual enemies as they pass to and fro, but by despatching adequate force to important centers, where the hostile shipping for any reason is known to accumulate. * * * Let a single ship of war—commerce destroyer—meet twenty or thirty merchant ships at sea, he can take but few; the rest scatter and escape, and the prisoners must be cared for. Corner the same squadron in port, and neither difficulty, as a rule, exists.”²

In his statement to the Marine Committee of the Continental Congress on a proposed scheme for the new navy, he advised against ships of the line, on the ground that the United States were not then prepared to contend with Great Britain for mastery of the sea on a grand scale, and recommended the immediate construction of five or six

¹ Buell, Paul Jones, Founder of the American Navy, I, 53.

² Captain Mai an, Scribner’s Magazine, July, 1898.

frigates, of which fast sailing was to be a prime quality. "Keeping," he said, "such a squadron in British waters, alarming their coasts, intercepting their trade, and descending now and then upon their least-protected ports, is the only way that we, with our slender resources, can sensibly affect our enemy by sea warfare. Rates of insurance will rise; necessary supplies from abroad, particularly naval stores for the British dockyards, will be cut off; transports carrying troops and supply ships bringing military stores for land operations against us will be captured, and last but not least, a considerable force of their ships and seamen will be kept watching or searching for our frigates."¹

Two descents were made by Jones on the British isles, at Whitehaven and St. Mary's Island. The purpose of the descent at Whitehaven was the destruction of the shipping; of that at St. Mary's Island, the seizure of the Earl of Selkirk as a hostage for the better treatment of American prisoners then in England. The Earl was not at home at the time. Plate, taken from his castle by some of the landing party, was afterwards restored by Jones at his own expense. Whitehaven was defended by two small forts. As to the descent at Whitehaven Jones reported: "Its actual results were of little moment, for the intended destruction of shipping was limited to one vessel. But the moral effect of it was very great, as it taught the English that the fancied security of their coasts was a myth and thereby compelled their Government to take extensive measures for the defense of numerous ports hitherto relying for protection wholly on the vigilance and supposed omnipotence of their navy. It also doubled or more the rates of insurance, which in the long run proved the most grievous damage of all."²

¹ Buell, I, 38-42.

² Buell, I, 109-114. As to the case of the Earl of Selkirk, Mr. Buell expresses the opinion that "a project to seize the person of a non-combatant nobleman with a view of holding him as a hostage or of coercing him to use his influence with his Government for the better treatment of prisoners of war, fairly captured, can hardly be brought within the most liberal definition of civilized warfare," and that "the fact that it had many examples in the conduct of British landing parties on our own coast is no justification," as "two wrongs do not make one right."

Landings at different points on the British coasts were planned for the expedition in the *Bon Homme Richard*, in 1779, but in deference to French wishes these were abandoned and a cruise against commerce in the open sea made instead.¹

War of 1812.—The later stages of the war of 1812 were marked by incursions of the British naval forces at various points on the coast of the Chesapeake Bay, in retaliation for acts of the United States troops in Canada.² The threat of Admiral Cochrane to enter upon such a course was the subject of a correspondence between him and Mr. Monroe, then Secretary of State, in August and September, 1814.³ But in April and May, 1813, several towns along the Chesapeake were devastated by the forces under Rear-Admiral Cockburn, when the plea of retaliation was not alleged.⁴ It appears that Cockburn's orders were to destroy everything that could serve a warlike purpose, and to interrupt, as far as possible, communication along the shore.⁵ On April 28 he reached Frenchtown, a village of a dozen buildings, where he drove away the few Americans who made a show of resistance, and burned a quantity of property, "consisting of much flour, a large quantity of army clothing, of saddles, bridles, and other equipments for cavalry, etc., together with various articles of merchandise," besides five vessels lying near the place.⁶

The first destruction of the town itself took place at Havre de Grace, a place of some sixty houses. The immediate object of the attack was the destruction of a battery lately erected there. The British forces "met with only resistance enough to offer an excuse for pillage."⁷ The battery was soon silenced, and the boat's crew having landed drove the militia to the further extremity of the

¹ Captain Mahan, *Scribner's Magazine*, XXIV, 34.

² Adams' *History of the United States*, VIII, 124-128.

³ *Am. State Papers, For. Rel.*, III, 693-694.

⁴ Reports of Rear-Admiral Cockburn to Admiral Warren, *James' History of the War in America*, II, 404-411.

⁵ Adams, VII, 266, citing *London Gazette*, July 6, 1813.

⁶ Adams, VII, 266-267, citing the *London Gazette*.

⁷ Adams, VII, 267.

town, where, according to Cockburn's report, "no longer feeling themselves equal to an open and manly resistance, they commenced a teasing and irritating fire from behind the houses, walls, trees, etc., from which, I am sorry to say, my gallant first lieutenant received a shot through his hand whilst leading the pursuing party; he, however, continued to head the advance, with which he soon succeeded in dislodging the whole of the enemy from their lurking places and driving them for shelter to the neighboring woods. * * * After setting fire to some of the houses, to cause the proprietors (who had deserted them and formed part of the militia who had fled to the woods) to understand and feel what they were liable to bring upon themselves by building batteries and acting towards us with so much useless rancor, I embarked."¹ According to an American account of the affair, the militia, on the killing of a man by a rocket, fled precipitately, and the marines then proceeded to plunder and burn the houses, of which about forty were destroyed. This account gives the impression that there was little, if any, firing from the houses.²

Subsequently the villages of Georgetown and Fredericktown were destroyed. In his report concerning them Admiral Cockburn makes no mention of irregular firing. He says:

"I sent forward the two Americans in their boat to warn their countrymen against acting in the same rash manner the people of Havre de Grace had done, assuring them, if they did, that their towns would inevitably meet with a similar fate; but, on the contrary, if they did not attempt resistance, no injury should be done to them or their towns; that vessels and public property only would be seized; that the strictest discipline would be maintained; and that, whatever provisions or other property of individuals I might require for the use of the squadron, should be instantly paid for in its fullest value. * * * I am sorry to say, I soon found the more unwise alternative was adopted; for on our reaching within about a mile of the town, between two projecting elevated points of the river,

¹James, II, 406.

²North Am. Rev., V. (July, 1817), 157.

a most heavy fire of musketry was opened on us from about 400 men, divided and entrenched on the two opposite banks, aided by one long gun. The launches and rocket boats smartly returned this fire with good effect, and with the other boats and marines, I pushed ashore immediately above the enemy's position, thereby ensuring the capture of the town or the bringing him to a decided action. He determined, however, not to risk the latter, for the moment he discerned we had gained the shore, and that the marines had fixed their bayonets, he fled with his whole force to the woods, and was neither seen nor heard of afterwards, although several parties were sent out to ascertain whether he had taken up any new position, or what had become of him. I gave him, however, the mortification of seeing, from wherever he had hid himself, that I was keeping my word with respect to the towns, which (excepting the houses of those who had continued peaceably in them, and had taken no part in the attack made upon us) were forthwith destroyed."

In these affairs, Admiral Cockburn seemed to have acted on the old idea that where a useless defense is made, those who resist are not entitled to the privileges of belligerents. "Where he met no resistance he paid in part for what private property he took."¹

Bombardment of Greytown, or San Juan del Norte.—In March, 1852, the Mosquito authorities, by a proclamation issued by the British consul, called on the people of "Greytown," a name which had been given to the town of San Juan del Norte, in Nicaragua, to form a constitution and set up a government. This government came into power on May 1, 1852, the Mosquito authorities surrendering their functions and retiring from office. A controversy soon broke out between the new authorities and the Accessory Transit Company, an organization composed of citizens of the United States who held a charter from Nicaragua, as to the occupation by the company of a portion of land on the north side of the harbor known as Punta Arenas, over which jurisdiction was claimed by the municipality. Greytown was regarded by the United States as being within the limits of Nicaragua. It was

¹ Adams, VII, 269; North Am. Rev., V, 157, July, 1817.

understood to claim independence under a charter from the Mosquito King; but the United States never recognized the Mosquito King nor the independence of the town, though American naval officers were instructed to respect the police regulations of any de facto authorities there, and not to molest such authorities unless they should attempt to disturb the rights of American citizens.

February 8, 1853, the city council passed a resolution notifying the Accessory Transit Company to remove certain buildings within five days and its entire establishment within thirty days, and declaring that if this was not done summary measures would be taken, as the land was needed for public uses. The buildings which were to be removed within five days were a structure used for boarding and lodging the employees of the company and a brick oven belonging to one McCerren, a citizen of the United States, who at the time was absent. They were not removed; and on February 21 they were demolished by a party of armed men, who, accompanied by the marshal of Greytown, and under the joint command of a member of the city council and "Major" Lyons, a colored resident, "acted in a most outrageous manner, not even permitting the clerks of the company to save the property in the house, and actually imprisoned and fined one of them for attempting to rescue some valuable articles from destruction."¹ When, a few days later, Mr. Baldwin, the agent of the company, went to Greytown to invoke the protection of a British man-of-war, he was arrested and held some time in custody.²

March 10, 1853, Capt. Hollins, of the U. S. S. *Cyane*, arrived at Greytown. The agent of the company immediately invoked his protection, and he promptly advised the mayor of the town that he could not permit any depredations on the property of the company. The mayor replied that no "depredations" had been or would be made upon the property of the company, but that he should proceed to eject the company according to law, unless illegally prevented by a superior force. It was

¹ Capt. Hollins to the Secretary of the Navy, March 30, 1853, Br. & For. State Papers, XLVII, 1033-1044.

² Br. & For. State Papers, XLVII, 1019.

afterwards learned that a force from the town was under arms, preparing to proceed against Punta Arenas and the Accessory Transit Company, and that the destruction of the company's property by fire was threatened. Capt. Hollins then placed a marine guard on Punta Arenas, with instructions to inform the "marshal" that the property could not be molested. When the marshal landed he was so advised, and he then mustered his "posse of carpenters" and returned to Greytown. In consequence of many threats and manifest excitement among the citizens of the town, Capt. Hollins continued the guard at Punta Arenas and warned the citizens of Greytown of his intention to protect the persons and property of citizens of the United States against molestation. His proceedings were approved by the Secretary of the Navy.¹

In consequence of the dispute as to jurisdiction over Punta Arenas, the difficulties between the municipality and the Accessory Transit Company continued. Early in May, 1853, some men, who were then or had previously been employed by the company, ran off with some of its property in a boat to Greytown. They were pursued by employees of the company, who, while attempting to arrest the fugitives, were compelled by the municipal police to desist. Subsequently a clerk of the company who, under orders of the agent, sought to recover the boat was forcibly interrupted by the police, and was obliged to leave behind some of the stolen property, which afterwards disappeared. On the same day a warrant was issued for the arrest, on a charge of assault and battery, of one of the employees who had endeavored to seize the fugitives. The agent of the company, on jurisdictional grounds, refused to allow the service of the warrant at Punta Arenas, but the marshal returned and effected the arrest with a force of armed men. The prisoner, whose name was Sloman, was taken to Greytown, where Mr. Fabens, the U. S. commercial agent, procured his discharge under bond. The company's agent was afterwards arrested at Greytown and held to bail on a charge of having obstructed Sloman's arrest at Punta Arenas.²

¹ Br. and For. State Papers, XLVII, 1012-1018.

² British and Foreign State Papers, XLVI, 859.

Disputes also existed as to the payment of dues and port charges by the steamers of the Accessory Transit Company. The agent of the company finally instructed the officers of the steamers to pay no more port charges at Greytown and to take no letters or packages or freight for its inhabitants. This action much exasperated the people of the town.

On the evening of May 16, 1854, a difficulty of more serious import occurred. The population of Greytown then numbered about 300 persons, consisting of a few Englishmen, Frenchmen, Germans, and men from the United States, but mainly of negroes from Jamaica and some natives of the Mosquito shore. On the day mentioned the steamer *Routh*, of the Accessory Transit Company, arrived at Punta Arenas under the command of Capt. T. T. Smith, and took her position alongside the steamer *Northern Light* to deliver her passengers. About dusk a bungo, having on board 25 or 30 armed men, mostly Jamaica negroes headed by a mulatto as marshal, came over from Greytown and ran alongside the *Routh*. The marshal, accompanied by several armed men, then jumped on board and announced their purpose to arrest Captain Smith under a warrant from the mayor of Greytown on a charge of murder, based upon the shooting by Captain Smith of a native boatman.

At this stage of the proceedings Mr. Borland, United States minister to Central America, who was on board the *Northern Light* on his way to the United States, was appealed to. He went on board the *Routh* and found Capt. Smith standing at his cabin door, keeping the marshal and his men at bay. Mr. Borland informed the marshal that the United States did not recognize the authority of the municipality at Punta Arenas to arrest an American citizen, and ordered him with his men to withdraw. Meanwhile, loud and threatening language was used by the men on the bungo, and several of them rushed on board the steamer. A further invasion was prevented by Mr. Borland taking a rifle and warning the men on the bungo to keep off.

Early in the evening Mr. Borland went to Greytown to call upon Mr. Fabens, the United States commercial agent.

He then learned that, at a meeting of the people of the town, it had been resolved to arrest him. This meeting was presided over by the mayor, a Frenchman named Signad, who, though he afterwards disavowed responsibility for what took place, was said to have been present when it was proposed by Martin, the ex-mayor, to make the arrest. The attempt was made. A body of men, consisting in part of the regular police of the town, armed with muskets, and headed by a Jamaica negro, went to Mr. Fabens's house and announced that they came by order of the mayor to arrest Mr. Borland for preventing the arrest of Capt. Smith. Mr. Borland appeared and warned them against the consequences of what they proposed, and called several gentlemen who were in an upper room to witness the threatened assault upon him. The leader of the armed force then summoned Martin, the ex-mayor, as if to consult him, but Martin not answering, they drew off a little way from the door. The mayor then came up and assured Mr. Borland that the proceedings had been taken without his order and authority; and while the conversation was going on someone from the crowd threw a broken bottle at Mr. Borland, slightly wounding him in the face. The person who threw the missile was not recognized. Soon afterwards the crowd dispersed. At Mr. Borland's request, Mr. Fabens proceeded in a boat to the *Northern Light* in order if possible to obtain aid. On deliberation, it was decided that a committee of three passengers should return with Mr. Fabens to Greytown, communicate with Mr. Borland and agree upon a proper course to be taken. The boat bearing them, though notice was given that the consul was on it, was fired on and not allowed to land, and was thus compelled to return to the *Northern Light*. During the night the town was occupied by armed men, whose sentinels, stationed between the American consulate, where Mr. Borland was, and the harbor, challenged all who attempted to pass, prevented boats from landing or leaving the shore, and thus kept Mr. Borland a prisoner all night. On the following morning, between seven and eight o'clock, Mr. Borland, taking advantage of a momentary lull in the excitement, procured a boat and returned to the *Northern Light*, where it was decided, at a meeting of the passen-

gers, to engage the services of fifty men to act as an armed guard at Punta Arenas till the United States Government could be informed of the state of affairs.¹

Mr. Marcy, who was then Secretary of State, on June 3, 1854, informed Mr. Fabens that a man-of-war would be ordered to visit San Juan; that the conduct of the people there had attracted the attention of the Government of the United States and would not pass unnoticed; and that the inhabitants of the place would be expected to make reparation for the wrongs and outrages they had committed. On the 9th of June he advised Mr. Fabens that Capt. Hollins would immediately proceed to San Juan. The Government, said Mr. Marcy, was embarrassed by the rumor that the pretended civil and political authority of the place had dissolved; nevertheless, should there be no organized body upon which a demand for redress could be made, the individuals who had participated in the infliction of the wrongs could not escape from responsibilities resulting from the conduct of the late political organization. The people of San Juan were expected to repair the injury they had caused to the Accessory Transit Company by withholding from it the property which had been stolen and taken to San Juan, and by protecting persons who were guilty of felony. Moreover, the indignity to Mr. Borland could not, declared Mr. Marcy, pass unnoticed. If done by order of the authorities of the place, they must answer for it in their assumed political character, and nothing short of an apology for the outrage would save the place from the infliction that such an act merited. If it was committed by lawless individuals, without the authority or connivance of the town, then it was clearly the duty of those who exercised the civil power in San Juan to inflict upon them exemplary punishment. The nominal magistrates there, in neglecting to bring them to justice, would impliedly sanction their acts and assume responsibility for them.²

The instructions of Mr. Dobbin, Secretary of the Navy, to Capt. Hollins bear date June 10, 1854. They refer to the two incidents of the stealing of the company's property

¹ Br. and For. State Papers, XLVI, 866-872.

² Br. and For. State Papers, XLVI, 847.

and the indignity to Mr. Borland. Capt. Hollins was to consult freely with Mr. Fabens. It was, declared the instructions, very desirable that the people of Greytown "should be taught that the United States will not tolerate these outrages, and that they have the power and determination to check them. It is, however, very much to be hoped that you can effect the purposes of your visit without a resort to violence and destruction of property and loss of life. The presence of your vessel will, no doubt, work much good. The Department reposes much in your prudence and good sense."¹

June 12, 1854, Mr. Fabens informed Capt. Hollins, who had then arrived at San Juan, that he had demanded, on behalf of the United States, an indemnity for the property feloniously taken from the Accessory Transit Company. He had also renewed the demand for indemnity for the destruction of the company's property in March, 1853. He had learned that, although a second demand for satisfaction had been made, no redress would be given; nor would any apology be made by the town or its authorities for the insult to Mr. Borland, nor would any steps be taken to bring the perpetrators to justice. He added that the chief actors and instigators were in undisputed possession of the town, its arms and ammunition, and the people were thus virtually countenancing and approving the indignity.²

On July 12 Capt. Hollins, at 9 o'clock in the morning, issued a proclamation announcing that, if the demands for satisfaction presented by Mr. Fabens were not forthwith complied with, he would, at 9 o'clock a. m. of the following day, proceed to bombard the town. The particular demands in question were those specified in a letter of Mr. Fabens, of July 11, addressed "To those now or lately pretending to and exercising authority in and to the people of San Juan del Norte." They comprised the immediate payment of \$24,000 as an indemnity for injuries to the Accessory Transit Company and for outrages perpetrated on the persons of American citizens, and an

¹ Br. and For. State Papers, XLVI, 875.

² Br. and For. State Papers, XLVI, 877.

apology for the indignity to Mr. Borland, together with satisfactory assurances of future good behavior.

After the issuance of the proclamation, a force went ashore from the *Cyane* and secured the arms and ammunition on shore. At the same time foreigners generally, and persons favorable to the United States, were notified that a steamer would be in readiness on the morning of the bombardment to convey them to a place of safety. An offer was also made to Commander Jolley, of the British war schooner *Bermuda*, of assistance in removing any British persons or property. He responded with the following protest:

“The inhabitants of this city, as well as the houses and property, are entirely defenseless and at your mercy. I do, therefore, notify you, that such an act will be without precedent among civilized nations; and I beg to call your attention to the fact that a large amount of property of British subjects, as well as others, which it is my duty to protect, will be destroyed; but the force under my command is so totally inadequate for this protection against the *Cyane*, I can only enter this my protest.”

Capt. Hollins at once replied:

“The people of San Juan del Norte have seen fit to commit outrages upon the property and persons of citizens of the United States after a manner only to be regarded as piratical, and I am directed to enforce that reparation demanded by my Government. Be assured I sympathize with yourself in the risk of English subjects and property under the circumstances, and regret exceedingly the force under your command is not doubly equal to that of the *Cyane*.”

A steamer was sent to the town at daylight on the morning of the 13th to take away such persons as desired to go. A few only accepted the opportunity, and these were conveyed to Punta Arenas. The majority of the inhabitants either had left or were willing to remain and risk the consequences. It was hoped that the show of determination on the part of the ship would at this stage have brought about a satisfactory adjustment of differences; but none of the inhabitants called upon Capt. Hollins, and no explanation or apology was attempted.

At 9 o'clock in the morning of the 13th the batteries of the *Cyane* were opened on the town with shot and shell for three-quarters of an hour. After an intermission of the same length they were opened again for half an hour, and this was followed by an intermission of three hours, after which the firing was renewed for twenty minutes, and then the bombardment ceased. The object of the several intervals in the bombardment was to afford an opportunity to the people of the town to treat and arrange matters. No advantage was taken of it, and at four o'clock p. m. a force was sent ashore to complete the destruction of the town by fire, though instructions were given to exempt from destruction, if possible, the property of a Frenchman named De Bardwell, who was understood to have held aloof from the action of the people. No lives were lost, although an attack was made by an armed party on the men who were sent ashore; but on the volley being returned the assailants fled. "The execution," says Capt. Hollins, "done by our shot and shell amounted to the almost total destruction of the buildings; but it was thought best to make the punishment of such a character as to inculcate a lesson never to be forgotten by those who have for so long a time set at defiance all warnings, and satisfy the whole world that the United States have the power and determination to enforce that reparation and respect due to them as a Government in whatever quarter the outrages may be committed."¹

This transaction was fully discussed in President Pierce's second annual message of Dec. 4, 1854, which contains the following comments:

"This pretended community, a heterogeneous assemblage gathered from various countries, and composed for the most part of blacks and persons of mixed blood, had previously [to the mobbing of Mr. Borland] given other indications of mischievous and dangerous propensities. Early in the same month property was clandestinely abstracted from the depot of the Transit Company and taken to Greytown. The plunderers obtained shelter there and their pursuers were driven back by its people,

¹ Br. and For. State Papers, XLVI, 878, et seq.

who not only protected the wrongdoers and shared the plunder, but treated with rudeness and violence those who sought to recover their property. * * * I could not doubt that the case demanded the interposition of this Government. Justice required that reparation should be made for so many and such gross wrongs, and that a course of insolence and plunder, tending directly to the insecurity of the lives of numerous travelers and of the rich treasure belonging to our citizens passing over this transit way, should be peremptorily arrested. Whatever it might be in other respects, the community in question, in power to do mischief, was not despicable. It was well provided with ordnance, small arms, and ammunition, and might easily seize on the unarmed boats, freighted with millions of property, which passed almost daily within its reach. It did not profess to belong to any regular government, and had, in fact, no recognized dependence on or connection with any one to which the United States or their injured citizens might apply for redress or which could be held responsible in any way for the outrages committed. Not standing before the world in the attitude of an organized political society, being neither competent to exercise the rights nor to discharge the obligations of a government, it was, in fact, a marauding establishment too dangerous to be disregarded and too guilty to pass unpunished, and yet incapable of being treated in any other way than as a piratical resort of outlaws or a camp of savages depredating on emigrant trains or caravans and the frontier settlements of civilized states. * * * No individuals, if any there were, who regarded themselves as not responsible for the misconduct of the community adopted any means to separate themselves from the fate of the guilty. The several charges on which the demands for redress were founded had been publicly known to all for some time, and were again announced to them. They did not deny any of these charges; they offered no explanation, nothing in extenuation of their conduct, but contumaciously refused to hold any intercourse with the commander of the *Cyane*. By their obstinate silence they seemed rather desirous to provoke chastisement than to escape it. * * * When the *Cyane*

was ordered to Central America it was confidently hoped and expected that no occasion would arise for a 'resort to violence and destruction of property and loss of life.' Instructions to that effect were given to her commander; and no extreme act would have been requisite had not the people themselves, by their extraordinary conduct in the affair, frustrated all the possible mild measures for obtaining satisfaction. * * *

"This transaction has been the subject of complaint on the part of some foreign powers, and has been characterized with more of harshness than of justice. If comparisons were to be instituted, it would not be difficult to present repeated instances in the history of states standing in the very front of modern civilization where communities far less offending and more defenseless than Greytown have been chastised with much greater severity, and where not cities only have been laid in ruins, but human life has been recklessly sacrificed and the blood of the innocent made profusely to mingle with that of the guilty."

The Government of the United States declined to entertain the claims of French subjects, growing out of the bombardment, on the ground that persons domiciled at Greytown must look to that community for protection.¹

It is to be noticed that President Pierce, in the passages above quoted, clearly assumed the position that the inhabitants of Greytown were not as a body entitled to be treated as a civilized and responsible community.

The Crimean War.—In the *Moniteur* of May 6, 1854, is given the report of the French admiral on the bombardment of Odessa, which had taken place on April 22. It was claimed that a flag of truce had been fired on and that the bombardment was in retaliation. The bombardment was directed at the public establishments, the public vessels, and the fortifications, the city itself and the merchant vessels being spared. The admiral mentions the fact that his orders had directed him to spare open towns.

At pp. 331-347 of the *British Expedition to the Crimea*, by W. H. Russell, the London *Times* correspondent, is

¹ Mr. Marcy, Sec. of State, to Count Sartiges, French minister, Feb. 26, 1857, S. Ex. Doc. 9, 35 Cong. 1 sess.; Lawrence's Wheaton (1863), 173, note 59.

given the history of the expedition to the Sea of Azov. During this expedition numerous landings were made along the shore, and extensive plundering was engaged in. These proceedings are referred to by a writer in the *Times*, Aug. 31, 1888, who signs *Haud Iguarus Mali*. He states that at various places on the Sea of Azov large stores of corn, private property, were burnt, and that the English press approved rather than condemned what was done.

Bombardment of Valparaiso.—The series of events which culminated in the bombardment of Valparaiso by a Spanish squadron, March 31, 1866, originated in a controversy between Spain and Peru, known as the "Talambo" question, and involving alleged delays, defaults, and denials of justice in the administration of the criminal law by the tribunals of the latter country.¹ On the refusal of Peru to comply with certain demands for redress, as well as to receive and negotiate with a new diplomatic agent of Spain, on whose life attempts were alleged to have been made by Peruvians, a Spanish squadron took possession of the Chincha Islands. Any design against the territorial integrity of Peru was afterwards disclaimed, but the seizure of the islands was accompanied with a manifesto in which it was intimated that, as Spain had never acknowledged the independence of Peru, she might rightfully reassert her ancient title to them.²

When intelligence of these things reached Chile it produced great excitement, and every effort was made to force the Government into a warlike attitude. May 4, 1864, Señor Tocornal, then Chilean minister for foreign affairs, addressed to the Governments of America a circular in which he declared that the manifesto issued by the Spanish representatives in Peru sanctioned principles which placed in doubt the independence of that country and must therefore be reprobated and protested against by Chile, and he expressed confidence that the Spanish Government would not approve it. This circular, however, was not considered sufficiently demonstrative; and on May 7 Señor Tocornal, yielding to popular clamor, resigned. He was succeeded by Señor Covarrubias. It

¹ Dip. Cor., 1864, IV, 15, 18.

² Dip. Cor., 1864, IV, 23, 32, 35, 87, 89.

was understood that orders were issued to officials along the coast to refuse supplies and coal to Spanish men-of-war, and in the following September a decree was promulgated declaring coal to be contraband of war and directing that supplies of it be withheld from public vessels of a state employed in hostilities against another state.¹

The relations between Spain and Chile were soon aggravated by various incidents. Instructions were issued to Admiral Pareja, commanding the Spanish forces in the Pacific, which invested him with plenipotentiary powers. The Spanish minister at Santiago, Mr. Tavira, sought, however, to effect an amicable arrangement. In a note of May 13, 1865, he set forth the grievances of his Government. The note complained of popular affronts to the Spanish flag, at which officials were alleged to have connived; of Mr. Tocornal's circular of May 4; of the failure to correct expressions of public opinions which contravened the law; of the permission given to the Peruvian war steamer *Lerzundi* to obtain munitions of war and supplies and to enlist men, while obstacles were placed in the way of sending supplies to the Spanish squadron; of the failure to prevent unlawful expeditions; of the refusal to allow Spanish steamers to take coal, and of the decree declaring coal to be contraband of war, with the object of prejudicing Spain; of the subsequent permission given to Peru to purchase horses, which were contraband of war by the law of nations; and of the failure to bring actions for certain libels in the press. Mr. Tavira stated that his Government would be willing to receive "the solemn declarations" which the case demanded, provided they were compatible with its dignity. Mr. Covarrubias replied on May 16, 1865, reviewing the subjects of complaint, flattering himself that he had dissipated them, and declaring that his explanations were a fresh testimonial to the constant yearning and efforts of his Government to maintain friendly relations with Spain. Mr. Tavira responded, on May 20, saying that the explanations given dissipated, in his judgment, all motives of complaint, and that he would advise his Government of them.

¹ Dip. Cor., 1864, IV, 179-183, 189-190.

The Spanish Government repudiated Mr. Tavira's action and charged him with antedating the note of May 13, in order to make it appear that it was sent before the arrival of instructions which he received on the 14th of that month. He was removed from his post and ordered home. The terms of settlement insisted upon in the instructions embraced disapproval of or apology for the grievances of Spain, and a salute to the Spanish flag, which would be immediately returned and no indemnity asked. If these terms were refused Admiral Pareja was authorized to take measures of another kind. Spain reserving the right to exact indemnities for the past and guarantees for the future.¹

Admiral Pareja was instructed, if Chile refused the demands of Spain, to address, in the first place, a circular to all the Spanish-American Republics assuring them that Spain had no designs on their territory or independence. He was then to put the whole Chilean coast under blockade. This blockade was to continue one month, and if Chile had not then accepted the conditions offered by Spain he was authorized to perform any and every other hostile act against the power and prosperity of Chile recognized as legitimate in a state of war, throwing upon the Chilean Government the responsibility. The point on which Spain specially insisted was the salute to her flag, which she felt had been insulted. If such a salute was given, it would be immediately returned by the Spanish fleet, a new minister would instantly be sent to Santiago, and the Spanish forces would be withdrawn from the Pacific. The Spanish minister of state repeatedly declared that his Government would not permanently occupy any Spanish-American territory.²

September 17, 1865, Admiral Pareja, who, although a diplomatic agent of Spain then resided at Santiago, was invested with plenipotentiary powers, sent an ultimatum to the Chilean Government, demanding satisfactory explanations, with a salute of 21 guns to the Spanish flag, and intimating that if his demands were not complied with

¹ Dip. Cor., 1865, II, 545-552.

² Dip. Cor., 1865, II, 546-547, 556, 557.

diplomatic relations would be broken off, and that, if his forces were called into action, he would claim indemnity for injuries sustained by the Spanish squadron in consequence of the decrees of the Chilean Government. This ultimatum, signed by the Spanish admiral, was received at Santiago on the 18th of September, during the celebration of the fifty-fifth anniversary of the birth of the Republic. It was immediately rejected. It was presented again by the admiral, and on the 23d of September was again rejected. Next day Valparaiso was blockaded and a blockade was proclaimed of the other ports of the Republic. Chile responded by a declaration of war. The extended blockade was not in fact maintained, since there were fifty-three ports, while the Spanish forces comprised only four frigates and two smaller vessels. October 28, 1865, Admiral Pareja reduced the blockade to six ports.¹

Early in the contest the Chileans were greatly elated by the capture of the Spanish man-of-war *Coradonga*. This mishap caused deep mortification both to the Spanish navy and to the Government at Madrid. The Spanish force in Chilean waters was reenforced by two ships, which were withdrawn from Callao, notwithstanding the fact that in Peru, whose own dispute with Spain had seemed to be amicably adjusted, there had just taken place a sympathetic revolution which presaged an alliance with Chile.¹ At the end of December, 1865, the death of Admiral Pareja on board his flagship was announced; the United States minister at Santiago reported that from what he could gather the admiral had committed suicide. His military operations had entirely failed; and it was generally believed that a joint Chilean-Peruvian fleet, which was to include the *Covadonga*, was fitting out at the island of Chiloe.

Admiral Pareja was succeeded in command by Señor Castro Mendez Nuñez, captain of the iron-clad *Numancia*, the most formidable of the Spanish ships. He reduced the blockade to the ports of Caldera and Valparaiso, and later to Valparaiso alone. In January, 1866, news reached Chile of the conclusion of an alliance with Peru, and of

¹ Dip. Cor., 1866, II, 345, 349-362. ² Dip. Cor., 1866, II, 364-365.

the declaration of war by the latter. This alliance was joined by Ecuador and Bolivia. February 7 the Spanish fleet endeavored to engage that of Chile and Peru near the island of Chiloe, and was worsted.

The first intimation of a possible bombardment of Valparaiso was made by Admiral Pareja in October, 1865, but nothing came of it. In February, 1866, his successor caused the Chilean Government to be advised that in the event of an attempt being made from the town to destroy his vessels with torpedoes he would instantly open fire upon it.¹ Personally Admiral Nuñez seems to have been desirous of an amicable arrangement, and of avoiding such a measure of violence. About the middle of March, however, he received a formal appointment as commander in chief and plenipotentiary, and this was accompanied with or was soon followed by instructions which left him no other alternative. General Kilpatrick, then United States minister to Chile, and Commodore John Rodgers, commanding a special United States squadron at Valparaiso, labored in vain to bring about a pacific adjustment. Admiral Nuñez stated that the only terms which his instructions would permit him to accept were (1) a note disclaiming an intention to insult Spain, and declaring that the treaty of peace was only interrupted, not broken, by

¹ March 3, 1866, Admiral Denman wrote to the Lords Commissioners of the Admiralty that he intended to use two of his ships to enforce twenty-four hours' delay before the Spanish squadron should open fire on Valparaiso, in the event of the use of torpedoes against the Spanish ships. (Br. & For. State Papers, LVI, 937.) This intention the Lords considered "not to be justified by any rule of international law." April 16, 1866, Lord Clarendon instructed the British minister in Chile that he had consulted the law offices of the crown on the subject, and that in the opinion of Her Majesty's Government the course which the Spanish admiral had declared he would pursue would, under the circumstances stated, "be justifiable by international law." "Her Majesty's Government," said Lord Clarendon, "think it impossible to deny the belligerent right of Chile to employ torpedoes against the Spanish squadron: and equally impossible to deny the belligerent right of Spain to bombard the town which those instruments are employed to protect. In the opinion of Her Majesty's Government, however, it would be highly impolitic on the part of the Chilean Government to give cause to the Spanish commodore to put his threat into execution." (939.)

the declaration of war, and in proof of this the return of the *Coradonga*, and all other prizes; (2) a responsive declaration by Spain of a return of friendship, together with a disclaimer of any desire for conquest in America, or of exclusive influence in American Republics, and in proof of this the return of all prizes in the possession of the Spanish squadron; (3) after this exchange of notes, a reciprocal salute of 21 guns, the first gun to be fired from the Chilean forts, when, this accomplished, he would proceed to Santiago and present his credentials as envoy extraordinary and minister plenipotentiary and enter into negotiations for a permanent settlement. If these terms were accepted by Chile, similar ones would be offered to her allies.

Mr. Covarrubias, when advised of these terms, declined to act upon them without the concurrence of the representatives of the allies. This was construed as a rejection of them, and it seems correctly so, since not only was the minister of Peru then absent, but Mr. Covarrubias, as will be seen, soon afterwards made a counter-proposal which was evidently not the result of mutual consultation.

On the morning of March 27 Admiral Nuñez notified the diplomatic corps, the dean of the consular body at Valparaiso, and the intendente of the city that he would open his batteries on Saturday morning, the 31st of the month, thus allowing four days to noncombatants for removing with their effects, and that he would endeavor to injure only public property, but that if private property should be destroyed he could only place the entire responsibility on Chile. In a manifesto he stated that two ineffectual attempts had been made to engage the allied fleets in the waters of Chiloe, where they were protected by narrow passages and natural bulwarks of rock, so that vessels of the class of the Spanish squadron could not attack them. "The impossibility," he declared, "of getting within gunshot of vessels which shelter themselves behind the impassable barriers of locality, and the persistence of Chile in refusing the amends justly demanded of her, impose upon Spain the painful but unavoidable duty of making her feel all the weight of rigor to which that country exposes itself which absolutely refuses to

recognize the duties imposed upon the civilized communities of the universe."

The foreign residents of various nationalities addressed petitions and sent deputations to the foreign ministers and to the commanders of the foreign naval forces, praying for protection against the bombardment. Gen. Kilpatrick convoked a meeting of the diplomatic corps, but only the representatives of Italy and Prussia appeared; and it was decided that it was inexpedient for the American naval forces to make any physical opposition, in view of the course of the ministers of England and France. "Had those representatives," says Gen. Kilpatrick, "asked that our forces cooperate with those of England to that end, and thus given us moral support in our contemplated action, neither Commodore Rodgers nor myself would have hesitated to have used force to prevent the destruction of this city."

All the consular body, except the representatives of the Argentine Republic, Belgium, England, and France, joined in a protest to Admiral Nuñez, "In the face of the civilized world, against the consummation of an act which is inconsistent with the civilization of the age." The consuls of England, France, and the Argentine Republic made a joint and similar protest. The Belgian consul protested separately.

General Kilpatrick, in a written communication to Admiral Nuñez, said: "While belligerent rights permit a recourse to extreme measures for the carrying out of legitimate military operations, they do not include the wanton destruction of private property where no result advantageous to the lawful ends of the war can be attained. International law expressly exempts from destruction purely commercial communities, such as Valparaiso, and the undersigned would beg his excellency to consider most earnestly the immense loss to neutral residents, and the impossibility of removing within the brief term allotted to them their household goods, chattles, and merchandise. If, however, his excellency persists in his intention * * * it only remains for the undersigned to reiterate in the clearest manner, in the name of his Government, his most solemn protest against the act as unusual and

unnecessary, and in contravention of the laws and customs of civilized nations; reserving to his Government the right to take such action as it may deem proper in the premises."¹

The British minister, Mr. Thomson, in a similar protest, drew attention to the large neutral interests at stake and the impossibility of withdrawing them in four days, and to the futility of the proposed measure from a military point of view; and, reserving all the rights of his Government in the premises, he declared: "In attacking an open and undefended town an act will be committed against the laws and usages of war, against the rules established by international law, and against the laws of humanity."²

The diplomatic representatives of France, Italy, and Prussia also protested.³

On the morning of March 29 General Kilpatrick advised Mr. Covarrubias that Admiral Nuñez was disposed to say to the intendente of Valparaiso that, inasmuch as it was a purely commercial and unfortified port, the magnanimity of Spain would not permit its destruction if Chile, in reply, would state that she yielded to magnanimity what she refused to yield to force. Mr. Covarrubias answered by proposing that, as Adm. Nuñez had given as a reason for the bombardment that he could not meet the vessels of the allies, their squadron should be placed 10 miles from Valparaiso, there to engage an equal force from the Spanish fleet (the *Nununciacia* being excluded), Commodore Rodgers to match the ships and act as umpire. Admiral Nuñez declined this proposal, saying that as a military man he knew the superiority of his forces and should of course avail himself of it.⁴

On the morning of March 31 the bombardment took place, lasting three hours. The shots were chiefly directed at the public buildings—the bonded warehouses, the intendencia, and the railway station. Four of the warehouses were destroyed, containing neutral property valued at \$10,000,000. White flags were at the Admiral's request

¹ Dip. Cor., 1866, II, 402.

² Br. & For. State Papers, LVI, 966.

³ Dip. Cor., 1866, II, 386-393.

⁴ Dip. Cor., 1866, II, 391, 392, 404-405.

placed on the hospitals and churches, but some of these were struck. A part of the streets Planhada and Cocharne, extending from the intendencia toward the customs stores, was destroyed by fire, and some twenty-five private dwellings were consumed. The total loss was estimated at \$15,000,000, less than 5 per cent of which fell on Chileans. Two or three persons were killed and as many wounded.¹

Mr. Seward, in acknowledging General Kilpatrick's dispatches, said: "The conclusion at which you arrived . . . that it was not your duty to advise and instruct Commodore Rodgers to resist the bombardment by force is accepted and approved."² Subsequently Mr. Seward, in a letter to the Attorney-General, expressed the opinion that citizens of the United States domiciled in Valparaiso would have no claim for indemnity either against Spain or against Chile,³ and the Attorney-General gave to this view his sanction.⁴

Mr. Welles, Secretary of the Navy, in his annual report of Dec. 3, 1866, stated that Commodore Rodgers "was not required to interpose his force against or for either party;" that it was "his duty, even while endeavoring to mitigate the harsh severities of war, to maintain a strict neutrality;" and that, "the officers of other neutral powers having declined to unite in any decided steps to protect the city, no alternative remained for him to pursue consistently with the position of this Government towards the parties than that which he adopted."⁵

Lord Clarendon, on hearing of the bombardment, described it in a communication designed for the Spanish Government as "a wanton destruction unparalleled in modern times and unjustifiable on any grounds of a vast amount of neutral property stored up in the magazines of a defenceless town, without any material damage to the

¹ Dip. Cor., 1866, II, 386-393; Br. & For. State Papers, LVI, 971. For a circular of Mr. Covarrubias of April 1, 1866, on the bombardment, see Dip. Cor., 1866, II, 421.

² Dip. Cor., 1866, II 411-412.

³ Aug. 24, 1866, 74 MS. Dom. Let., 64.

⁴ 12 Op., 21.

⁵ Messages and Documents, 1866-'67, Abridgement, 703.

enemies of Spain, but with most disastrous consequences for those whom Spain professes to regard as friends." It appears, however, that Admiral Denman had been instructed "not to transgress the limits permissible to the representative of a neutral power, or to associate himself with any proceedings of the United States commodore which might be inconsistent with the neutral character."¹

The opinion of publicists is expressed by Hall, who declares that "the act gave rise to universal indignation at the time, and has never been defended."²

The bombardment practically ended hostilities in Chile; but, to the great inconvenience of neutral powers and particularly of the United States, it effectually blocked the way to the conclusion of a peace.³ At length, after repeated efforts at mediation, a conference between representatives of Spain and the allies was opened at Washington Oct. 29, 1870, under the presidency of Mr. Fish, April 11, 1871, an armistice was concluded whereby the *de facto* suspension of hostilities was converted into an indefinite truce, which was not to be broken by any of the belligerents except on three years' notice, given through the Government of the United States; and so long as the truce lasted all restrictions on neutral commerce were to cease. The last session of the conference took place January 24, 1872. Mr. Fish renewed his entreaties for a permanent peace. The Spanish minister declared this to be the desire of his Government. The Chilean minister, with the support of the ministers of Peru and Ecuador, replied that peace would be made if Spain would "remove the obstacle" by making reparation for the bombardment of Valparaiso. The Spanish minister declined to enter into a discussion which could produce "no beneficial result." At this announcement Mr. Fish expressed his disappointment, declaring that the United States had hoped that, in view of the great changes which had taken place in the executive Government of Spain, "the present sovereign * * *

¹ Br. and For. State Papers, LVI, 942, 953-954, 987.

² Int. Law, 4th ed., 556. See Calvo, Droit Int., 5th ed., VI, § 428.

³ Military necessity "does not permit * * * the doing of any hostile act that would make the return of peace unnecessarily difficult." (Stockton, Naval War Code, art. 3.)

might not be held morally accountable for the severe act of his predecessor in the assault on Valparaiso, but might satisfy the natural sensitiveness of Chile by expressing regret that the Government of Isabel II had omitted to offer Chile satisfactory explanations on that subject."

Nearly twenty years elapsed before treaties were made by Spain with Peru and Bolivia, the first of the allies with which she was able to conclude a formal peace.¹

British-French discussions.—A discussion of the subject of coast warfare was started in 1882 by Admiral Aube, of the French navy, who, in an article against the proposed discontinuance of Rochefort as a military port, argued that as "wealth is the sinews of war, all that strikes at the wealth of the enemy, *a fortiori* all that strikes at the sources of his wealth, becomes not only legitimate but imposes itself as obligatory. It must therefore be expected to see the fleets, mistresses of the sea, turn their power of attack and destruction, instead of letting the enemy escape from their blows, against all the cities of the coast, fortified or not, peaceful or warlike, to burn them, to ruin them, and at least ransom them without mercy. This was the former practice; it ceased; it will prevail again."² Similar views were expressed by other French writers.³ Contrary opinions were maintained by Admiral Bourgois, who deprecated any suggestion of repudiating "the principles of the law of nations which protect inoffensive citizens, noncombatants, and open and undefended towns against the horrors of war."⁴

The effect of these discussions was reflected in the British naval manœuvres of July and August, 1888, in which the enemy's fleet shelled "fine marine residences and watering places" and levied ransoms on undefended towns.⁵ These

¹ Moore, *Int. Arbitrations*, V, 5048-5056.

² *Revue des Deux Mondes*, L, 314, March 15, 1882.

³ M. Etienne Lamy, *Revue des Deux Mondes*, LIII, 320, Sept. 15, 1882; M. Gabriel Charmes, "La Reforme Maritime," *Revue des Deux Mondes*, LXVI, LXVIII, Dec. 15, 1884, March 1, 1885, April 15, 1885.

⁴ "Les Torpilles et Le Droit des Gens," *La Nouvelle Revue*, April 1, 1886; "La Defense des Côtes et Les Torpilles," Dec. 1, 1887, and Feb. 1, 1888. In the same publication, June 1, 1886, there is a reply to Admiral Bourgois' first article by "Un ancien officier de marine."

⁵ *The Times*, Aug. 7, 1888.

proceedings were objected to by Mr. Holland, on the ground that they might be cited as giving an implied sanction to such a mode of hostilities.¹ They were also condemned by Hall, who declared that “the plea * * * that every means is legitimate which drives an enemy to submission * * * would cover every barbarity that disgraced the wars of the seventeenth century;” that the proposal to revive in maritime hostilities a practice which had been “abandoned as brutal in hostilities on land” was “nothing short of astounding;” but that, before such things were done, “states are likely to reflect that reprisals may be made, and that reprisals need not be confined to acts identical with those which have called them forth.”²

Chilean Revolution, 1891.—January 16, 1891, during the contest between the government of Balmacedo and the Congressionalists, two forts at Valparaiso fired on the Congressionalist man-of-war *Blanco Encalada*, killing and wounding a number of persons on board. The attack “was not returned for reasons of humanity towards the people and the town.”³

February 16, 1891, a report having reached Iquique that the government troops had been defeated on the pampas near that place, the intendente surrendered the town to the Congressionalists, who occupied it with their naval forces. Early in the morning of February 19, government troops about 250 strong surprised the city, and the marines retired into the custom house, where they were supported by the squadron. Firing continued all day, and two fires broke out. Late in the afternoon a British naval officer, at the request of the revolutionary leaders on the *Blanco Encalada*, went ashore under a flag of truce, and arranged a suspension of arms to enable foreigners and non-combatants to leave the town. But for this, said the British admiral, Hotham, “Iquique would have disappeared, and with 250 drunken Chilean soldiers, no discipline nor police, and supplemented by roughs, the sufferings, and worse,

¹ Studies in Int. Law, 96 et seq.

² Int. Law, 4th ed., 556.

³ Blue-book, Chile, No. 1 (1892), 24. This abstention on the part of the Congressionalists is said to have been due to the influence of Captain St. Clair, of H. M. S. *Champion*. (Id. 83.)

of non-combatants, especially women and children, may be imagined."¹

March 26, 1891, Mr. Tracy, Secretary of Navy, addressed to Rear-Admiral Brown instructions in relation to the protection of American interests in Chile during the revolution then going on. With reference to the fleet of the Congressionalist party, whose belligerency had not been recognized by the United States, Mr. Tracy said:

“Should the bombardment of any place, by which the lives or property of Americans may be endangered, be attempted or threatened by such ships, you will, if and when your force is sufficient for the purpose, require them to refrain from bombarding the place until sufficient time has been allowed for placing American life and property in safety. You will enforce this demand if it is refused, and if it is granted, proceed to give effect to the the measures necessary for the security of such life or property.”²

July 27, 1891, Mr. Kennedy, British minister at Santiago, inclosed to Lord Salisbury a correspondence relating to the then recent bombardment of the town of Pisagua without provocation or notice of any kind by the Chilean Government ships *Almirante Condell* and *Imperial*, on June 8, 1891. Among the inclosures there was a protest of the consular body at Pisagua, which stated that the vessels came close into the port about 2 o'clock in the afternoon, and without notice of any kind began to fire their guns into the town, causing much damage. On July 7th Mr. Kennedy addressed a protest to the Chilean Government characterizing the proceeding as being “opposed to the recognized principles of international law or of civil warfare.” He also reserved all rights of British subjects as to property destroyed.

August 25, 1891, Mr. Kennedy's protest was approved by Lord Salisbury.³

Rules of the Institute of International Law, 1896.—The question of the bombardment of open towns by naval forces

¹ Blue-book, Chile, No. 1 (1892), 82-83.

² H. Ex. Doc. 91, 52 Cong. 1 sess., 245.

³ Blue Book, Chile No. 1 (1892), 198, 218. See Calvo, *Droit Int.*, 5th ed., VI, § 428 et seq.

was considered by the Institute of International Law at Cambridge in 1895, and at Venice in 1896. At the latter session rules were adopted which were designed to supplement, in regard to this question, the Manual of the Laws of War previously resolved upon at the session at Oxford. The rules, which were adopted September 29, 1896, were as follows:¹

“ART. 1. There is no difference between the rules of the law of war as to bombardment by military forces on land and that by naval forces.

“ART. 2. Consequently there apply to the latter the general principles enunciated in art. 32 of the Manual of the Institute—i. e., it is forbidden (*a*) to destroy public or private property, if such destruction is not commanded by the imperious necessity of war; (*b*) to attack and bombard localities which are not defended.

“ART. 3. The rules enunciated in arts. 33 and 34² of the Manual are equally applicable to naval bombardments.

“ART. 4. In virtue of the foregoing principles, the bombardment by a naval force of an open town—i. e., one not defended by fortifications or other means of attack or of resistance for immediate defense, or by detached forts situated in proximity to it, for example, at the maximum distance of from 4 to 10 kil., is inadmissible, except in the following cases:

“(1) In order to obtain by means of requisitions or of contributions what is necessary for the fleet.

“Nevertheless, such requisitions and contributions must remain within the bounds prescribed by arts. 56 and 58³ of the Manual of the Institute.

¹Annuaire, XV, 213.

²33. In case of bombardment all needful measures shall be taken to spare, if it be possible to do so, buildings devoted to religion and charity, to the arts and sciences, hospitals, and depots of sick and wounded. This on condition, however, that such places be not made use of, directly or indirectly, for purposes of defence.

34. It is the duty of the besieged to designate such buildings by suitable marks or signs, indicated, in advance, to the besieger.

³56. Impositions in kind (requisitions), levied upon communes, or the residents of invaded districts, should bear direct relation to the generally recognized necessities of war, and should be in proportion to the resources of the district. Requisitions can only be made, or

“(2) In order to destroy dockyards, military establishments, depots of munitions of war, or vessels of war found in a port.

“Moreover, an open town which is defended against the entrance of troops or of disembarked marines may be bombarded in order to protect the landing of soldiers and of marines if the open town attempts to prevent it, and as an auxiliary measure of war in order to facilitate an assault made by the troops and disembarked marines, if the town defends itself.

“There are specially forbidden bombardments whose sole object is to exact a ransom (*Brandschatz*), and, with greater reason, those destined only to induce the submission of the country by the destruction, without other motive, of peaceable inhabitants or their property.

“ART. 5. An open town may not be exposed to bombardment by the sole fact:

“(1) That it is the capital of a State or the seat of Government (but, naturally, these circumstances give it no guarantee against bombardment).

“(2) That it is actually occupied by troops, or that it is ordinarily garrisoned by troops of various arms, destined to rejoin the army in time of war.”

levied, with the authority of the commanding officer of the occupied district.

58. The invader can not levy extraordinary contributions of money, save as an equivalent for fines, or imports not paid, or for payments not made in kind. Contributions in money can only be imposed by the order, and upon the responsibility, of the general in chief, or that of the superior civil authority established in the occupied territory; and then, as nearly as possible, in accordance with the rule of apportionment and assessment of existing imposts.